IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

Crl.Rev.Pet.No. 52 of 2007()

AGAINST THE ORDER DATED 03/01/2005 IN CRA. 761 /2003 IN CRA.818/2003 of ADDL. SESSIONS COURT, THRISSUR
CC.613/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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REVN. PETITIONER:

BENSON, S/O.LONAPPAN,
C.NO.3961, CENTRAL PRISON,
VIYYUR.

BY ADV. SRI.G.KRISHNAKUMAR(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 52 OF 2007 B

Dated this the 7th day of November, 2007

O R D E R

The revision petitioner, who was the 1st accused in C.C.No.613/03 on the file of JFCM-I, Thrissur, challenges the conviction entered and the sentence passed against him concurrently by the courts below for an offence punishable under section 379 IPC.

2. The case of the prosecution can be summarised as follows:-

On 8.6.2003 at about 6 p.m. while PW1 Sujatha was walking along the Koorkkanchery Kuttath public lane, the two accused persons came there on a motor cycle driven by A2. A1 was the pillion rider. A1 snatched two gold chains worn by PW1. Thereafter, the two accused persons decamped with the motor cycle and the gold chains. The gold chain worn by PW1 was weighing 12 ½ sovereigns and worth Rs.50,000/-. The accused have thereby committed the aforesaid offence.

3. On the accused pleading not guilty to the charge framed against them by JFCM-I, Thrissur for the aforementioned

offence, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined six witnesses as PWs 1 to 6 and got marked four documents as Exhibits P1 to P4 and one material object as MO 1.

4. After the close of the prosecution evidence, the accused were questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence.

5. The learned Magistrate after trial, as per judgment dated 20.11.2003 convicted both the accused persons. Each of the accused persons was sentenced to rigorous imprisonment for three years. Crl.Appeal Nos.761/2003 and 818/2003 were filed by A1 and A2 before the Sessions Court, Thrissur. As per the common judgment dated 3.1.2005 passed by the Additional Sessions Judge, Thrissur, A2 was acquitted of the offence but the conviction and sentence against the revision petitioner/A1 were confirmed. Hence, this revision by A1.

6. I heard Advocate Sri.G.Krishnakumar, the learned counsel appearing for the revision petitioner on State Brief and

Advocate Sri.C.M.Nazar, the learned Public Prosecutor who defended the State.

7. Advocate Sri.G.Krishnakumar, the learned counsel appearing for the revision petitioner made the following submissions before me in support of his fervent plea for acquittal of the accused.

8. This is a case in which PW1 has not identified the accused at all. She had only glimpse of both the accused on the ill fated day. Since PW1 had no previous acquaintance with the accused, it was imperative on the part of the police to conduct a test identification parade. That was not done. PW1 claimed to have identified the accused only from the police station. The gold chain of PW1 allegedly snatched by A1 was not produced before court. What has been produced before court is MO1 gold ingot which cannot be identified by PW1. PW2, the jeweller from whom the gold ingot was recovered, has not been able to mention the date or other particulars on which he allegedly purchased the gold chain from the first accused/revision petitioner. He has deposed that he is afraid of the police. He has also not given the identifying details of the two gold chains which he allegedly purchased from

A1. The testimony of such a witness cannot be relied on to convict the revision petitioner. In fact, there is absolutely no evidence to connect the revision petitioner with the offence. No disclosure statement has been marked by the prosecution. PW5 the investigating officer, who claims to have seized the ingot as per Ext.P2 seizure mahazar, has not taken care to produce the disclosure statement allegedly recorded and falling under section 27 of the Evidence Act. Moreover, Ext.P2 seizure mahazar does not contain the signature or thump impression of the revision petitioner. Such a disclosure statement is inadmissible in evidence and will not fall under section 27 of the Evidence Act. [***Jackaran Singh Vs. State of Punjab*** - AIR 1995 SC 2345]. The courts below have overlooked by the above vital aspects while convicting the revision petitioner.

9. I am afraid that I cannot agree with the above submissions. It is true that PW1 did not have any previous acquaintance with the accused prior to the offence. But from her testimony before court it is clear that she had ample opportunity to note the features of the motor cyclists who were hovering around her and she had a fair chance of identifying them. When she had

a fair opportunity of seeing the culprits and recognise them her dock identification of the accused while giving evidence in the very same year does not become suspect. The failure to conduct a test identification parade will not, therefore, weaken the prosecution case. She has clearly deposed before court that it was the revision petitioner/A1, who was the pillion rider who snatched away her gold chain.

10. The occurrence was on 8.6.03. The revision petitioner was arrested on 12.6.03. It is true that pursuant to the disclosure statement given by the revision petitioner on 12.6.03, recovery was not effected on the same day but instead, the accused who was arrested in connection with another crime was produced before the Magistrate and it was thereafter on the next day that his police custody was obtained from the Magistrate and the recovery effected under Ext.P2 seizure mahazar. The seizure was pursuant to a statement made by the revision petitioner that he had sold the gold chain to PW2. PW2 has also confessed having purchased the gold chain from the revision petitioner. Of course, PW2 has not given the identifying features of the gold chain nor has he given the date on which he had purchased the gold chain.

There was no suggestion to PW2 that he has purchased any other gold chain from the revision petitioner. The fact that PW2 has admitted that he purchased two gold chains from the revision petitioner and MO1 is the ingot obtained after PW2 melting the same and the same was handed over by PW2 to the police will go long way to prove the complicity of the revision petitioner.

11. The disclosure statement recorded in Ext.P2 mahazar can be looked into by the court in the light of the decision of the Full Bench in ***State of Kerala Vs. Ammini*** [1987 (1) KLT 928]. Secondly, no sort of ulterior motive or enimity has been attributed to PW2 or to the investigating officer PW5 so as to infer that they were falsely implicating the accused.

12. As for the absence of signature and thump impression in the disclosure statement, the decision reported in ***Jackaran Singh Vs. State of Punjab***[AIR 1995 SC 2345] is no more good law. The apex court had subsequently suo motu reviewed its own judgment and had deleted that part of the judgment which said that the absence of signature and thump impression in the disclosure statement recorded under section 27 of the Evidence Act was a strong circumstance to prove the innocence of the

accused. At any rate, the conduct of the accused in pointing out the person to whom he had sold the ornaments is a guilty conduct falling under section 8 of the Evidence Act sufficient to connect the accused with the offence. Hence, I do not find any good ground to interfere with the conviction recorded against the revision petitioner. The conviction is accordingly confirmed.

13. The sentence imposed on the revision petitioner also is commensurate with the daring manner in which the offence was committed. Moreover, the trial Magistrate himself has adverted to the fact that the revision petitioner is a habitual offender. Under these circumstances, I see no good ground to interfere with the sentence imposed on the revision petitioner as well.

In the result, this revision is devoid of any merit and is accordingly dismissed confirming the conviction entered and sentence passed against the revision petitioner.

(V. RAMKUMAR, JUDGE)

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V. RAMKUMAR, J.

Crl. R.P. No. 52 OF 2007 B

O R D E R

7th day of November, 2007